

**REMARKS**

In response to the Office Action mailed September 22, 2004, each one of the cited references has been reviewed, and the rejections and objections made to the claims by the Examiner have been considered. The claims presently on file in the above-identified application are believed to be patentably distinguishable over the cited references, and therefore allowance of these claims is earnestly solicited.

In order to render the claims more clear and definite, and to emphasize the patentable novelty thereof, claims 1-3 and 13-19 have been cancelled without prejudice, claim 4 has been amended and new claims 21-30 have been added

**New Claims**

Based on the reasoning for the examiner finding allowable subject matter and the stated reason for Allowability, attorney for applicant has added new independent claim 21 and its dependent claims 22-25 have been added. In this regard, new independent claim 21 includes the limitation the examiner noted as not being taught nor disclosed in the prior art; namely "a pair of ear pieces, at least one of said pair of ear pieces having stop means for helping to limit an adjustment distance between said nasal cannula and the ear piece."

New independent claim 25 (and its dependent claims 26-30) includes another limitation which is not disclosed nor suggested by the prior art of record; namely, "a pair of ear pieces, each ear piece having a pair of guides.... wherein one of said pair of guides is an exit bridge disposed adjacent to an exit hole, said exit bridge and said hole cooperating to retain said extension tube within the ear piece and to help prevent said extension tube from being accidentally released from a fixed position relative to the ear piece." The importance of this novel

feature is fully supported by the specification as originally filed. (See the whole of paragraph 083). In addition, it should be noted that the Bartholomew reference (U.S. 5, 400,776) fails to disclose or suggest such a feature. Instead the Bartholomew reference teaches "[F]ormable clip 11 further has a pair of collar elements 41 and 43 each of which border longitudinal semi-cylindrically member 39 and forms ends 45 and 47. These collar elements 41 and 43 are substantially cylindrical in cross sectional shape and radially encase approximately three-quarters of the circumference of the insufflation tube 15. Collar elements 41 and 43 may fit around the inside (as shown in FIG. 3) or outside (not shown) of the bend of the tube." (See Col. 3, lines 1-8). In short, since the collar elements are both open to receive the tube therein, neither forms "an exit bridge disposed adjacent to an exit hole". Therefore new independent claim 25 patentably distinguishes over the Bartholomew reference. In addition, claim 26, which depends from claim 25 includes the limitation mentioned earlier which the examiner also note as not being taught nor disclosed in the prior art of record. Based on the foregoing independent claim 25 and its dependent claims 26-30 are in condition for immediate allowance as well.

Therefore, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested.

#### **Objections to Drawings**

The examiner objected to the drawings for failing to comply with 37CFR 1.84(p)(4) because reference character "62" has been used to designate both an exit hole and a flange. In order to make the specification consistent with the drawings, attorney for applicant has amended the specification to designate the exit hole by reference character 48 as shown in the drawings. (See FIGS. 19-21).

The examiner has further objected to the drawings under 37 CFR 1.83(a) stating that the drawings must show every feature of the invention specified in the claim. The examiner therefore has required that the exit hole be shown in the drawings. As noted above, the exit hole 48 is shown in the drawings and in particular it can be seen in FIG. 21 that the exit hole has a generally oval shape.

**Conclusion**

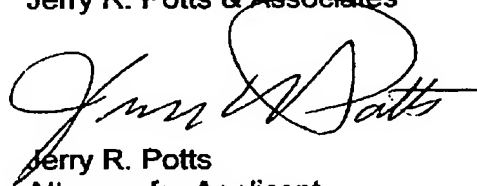
*JRP*  
~~No additional fee is required.~~ If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned Jerry R. Potts, Esq. at the below-listed telephone number.

Dated: October 11, 2004

Respectfully submitted,

Jerry R. Potts & Associates

By



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